

ORIGINAL

Kenneth R. Boley
boleky@l-o-law.com

RECEIVED

Tel 202/887-6230
Fax 202/887-6231

VIA HAND DELIVERY

April 4, 2003

APR - 4 2003

EX PARTE

Federal Communications Commission
Office of Secretary

Marlene Dortch
Secretary
Federal Communications Commission
The Portals
TW-A325
445 12th Street, S W
Washington, D C 20554

Re: Notice of Oral *Ex Parte* Presentations
CC Docket Nos. 01-337, 02-33, 98-10, 95-20

Dear Ms Dortch

On April 3, 2003, Dave Baker, Vice President for Law and Public Policy, EarthLink, Inc., and the undersigned met with James Carr, Chris Killion, and Debra Weiner, all of the Office of General Counsel to discuss EarthLink's position in the *Wireline Broadband* proceeding. EarthLink explained its reliance upon wholesale DSL services provided by Bell Operating Companies. The parties discussed EarthLink's *ex parte* letter filed March 24, 2003 which explains the legal obstacles to the Commission using "regulatory parity" as a basis for decision in this proceeding. EarthLink also discussed and provided a copy of its March 19, 2003 *ex parte* letter in this proceeding (CC Dkt 02-33) rebutting SBC's argument that the realization of consumer benefits is independent of whether there is competition among DSL-based ISPs. In relation to this discussion, EarthLink also provided a copy of the attached document entitled "Recent Awards."

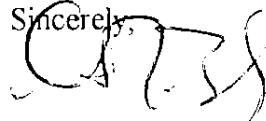
On the same day, Dave Baker and the undersigned also met with Carol Matthey, Brent Olson, Cathy Carpino, Gail Cohen, William Kehoe, and Michael Carowitz, all of the Wireline Competition Bureau, to discuss the *Wireline Broadband* proceeding. The parties discussed the EarthLink *ex parte* letter filed March 24, 2003 which explains the legal obstacles to the Commission using "regulatory parity" as a basis for decision in this proceeding. EarthLink also discussed its March 19, 2003 *ex parte* letter in this proceeding rebutting SBC's argument that the realization of consumer benefits is independent of whether there is competition among DSL-based ISPs. In relation to that discussion, EarthLink provided a copy of the attached document entitled "Recent Awards."

EarthLink also provided copies of the attached pages from BellSouth's Annual ONA Reports (filed April 15, 2001 and 2002 in CC Docket No. 88-2) as evidence that providers of

information services do make use of current ONA provisions. Finally, the parties discussed the potential implications of a decision to attempt *to* regulate wholesale DSL service provided to independent ISPs under Title I of the Communications Act, including the likely curtailment of competition in broadband Internet access services.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, eight copies of this Notice are being provided to you for inclusion in the public record in the above-captioned proceedings. Should you have any questions, please contact me.

Sincerely,



Kenneth R. Boley
Counsel for EarthLink, Inc

Enclosure

cc Michael Carowitz
Cathy Carpino
James Carr
Gail Cohen
William Kehoe
Chris Killion
Carol Matthey
Brent Olson
Debra Weiner

RECENT AWARDS



EarthLink



August 2002

2002 Highest in Customer Satisfaction Among High-Speed Internet Service Providers in a Tie and Highest in Customer Satisfaction Among Dial-Up Internet Service Providers - J.D. Power and Associates — EarthLink has received the Highest Ranking in Customer Satisfaction Among Dial-up ISPs and tied in the ranking for Highest Customer Satisfaction Among High-Speed ISPs, according to J.D. Power and Associates 2002 Syndicated Internet Service Provider Residential Customer Satisfaction StudySM.

"We are proud to have garnered these rankings in such a prestigious and customer-focused study," said Karen Gough, EarthLink's executive vice president of marketing. "J.D. Power and Associates has always defined the standard for excellence, and these rankings once again demonstrate our commitment to providing the very best Internet **experience** to our subscribers."

J.D. Power and Associates 2002 Syndicated Internet Service Provider Residential Customer Satisfaction StudySM. Study conducted among national and regional ISPs and based on 4,629 responses. www.jdpower.com



CNET.com
The source for computers
and technology.

April 2002

2002 CNET Editors' Choice Award — Citing EarthLink's (Nasdaq: ELNK) "cool tools and reliability," CNET for the third consecutive year has awarded top honors to EarthLink in its annual review of Internet service providers (ISP).

In an article titled *Dialing for dollars: we compare five major dial-up ISPs*, CNET writes, "... EarthLink gets our nod as the best among the major dial-up ISPs. Why? The service helps you get started, then steps nimbly out of the way. It offers easy-to-use tools and doesn't pester you with ads or spam. And, to top it off, EarthLink provides highly reliable service and surprisingly good support for a reasonable \$22 a month."



March 2002

2002 Ziff Davis Smart Business "Five-Star Award" — EarthLink has received the only five-star rating among Internet service providers (ISP) from the editors of *Ziff Davis Smart Business*. The magazine selected the Atlanta-based ISP as its "top pick," citing EarthLink's easy installation, abundance of local-access dial-up numbers and array of broadband choices, including cable, DSL and satellite high-speed access. In a review titled *Deathmatch: Internet Service Providers*, Gordon Bass writes, "The Net, the way you want it... Remarkably simple to install," and "Fastest time for a 1MB download with a 56Kbps connection."

Ziff Davis Smart Business 5-Star Award Logo is a trademark of Ziff Davis Publishing Holdings Inc.



October 2001
&
February 2000

2001 Mobile Computing's "First Class Award" — They write, "Once again, our First Class Award goes to EarthLink, but not just for providing a fast and reliable connection to the Internet without pop-up ads. This international ISP has rounded out its offerings by adding two pricing plans... and more important, by supporting a wide variety of wireless-access devices."

2000 Mobile Computing's Best ISP Award — Bob EarthLink and MindSpring were named best Internet service provider in Mobile Computing's editorial review. "Based on these factors [ability to connect to the Internet in a variety of ways and the time it took to connect], two companies which are soon to be one, came out on top."



June 4, 2001

2001 Inter@ctive Week's "Top Internet Service Provider" Award — For the second year in a row, EarthLink was honored with another award from *Inter@ctive Week*. This year, IT managers rated EarthLink the "Top Internet Service Provider" in a survey. "No Internet service provider is more deserving of a top spot in the ISP category than EarthLink... Number one fights hard to become a real alternative to America Online."



March 2001

2001 Ziff Davis Smart Business' "Best of the Best" Award — Formerly *PC Computing*, Ziff Davis Smart Business Magazine awarded EarthLink its second straight MVP award for best ISP while EarthLink Biz was named a Web Hosting finalist. The magazine writes "[EarthLink]... comes in first place for easy access to the Net from just about anywhere in the 50 states... What else could you want?"

DISPOSITION OF NEW ONA SERVICE REQUESTS

April 15, 2001

The Coinmission requires BellSouth to list all requests for new ONA capabilities received during the previous year under the ESP Request Process. The Commission also requires BellSouth to report annually on the final disposition of new service requests previously identified as needing further evaluation.

BellSouth received the following requests for new ONA capabilities from Enhanced Service Providers (ESPs) in 3000.

Request # 1 - 2 These ESP requests were for BellSouth to provide the ability for an ESP to order the Call Forward/Don't Answer capability on behalf of ESP's customer on a bulk basis.

BellSouth concluded that the requested capability could be satisfied via use of its Vendor Service Center personnel. ESPs submit bulk requests via use of Excel spreadsheets. The Excel spreadsheets may be transmitted either electronically or by FAX machine. ESPs are required to obtain customer approval prior to submitting such requests to BellSouth.

Request #3 - 6 These ESP requests inquired about the availability of SDSL- symmetric DSL services in BellSouth's DSL product suite.

BellSouth responded that it is currently developing the necessary operating system to support this type of service via the ITU standard G.SHDSL with product availability scheduled for late 2001

Request #7- 10 These ESP requests inquired about the availability of SLAs – Service Level Agreements- for BellSouth's DSL products.

BellSouth responded that it is investigating the logistics of structuring such an agreement for its current business class DSL products. The isolation of latency is one of the many issues to be worked out.

DISPOSITION OF NEW ONA SERVICE REQUESTS

April 15, 2002

The Commission requires BellSouth to list all requests for new **ONA** capabilities received during the previous year under the ESP Request Process. The Commission also requires BellSouth to report annually on the final disposition of new service requests previously identified as needing further evaluation.

BellSouth received the following requests for new ONA capabilities from Enhanced/Information Service Providers (ESPs/ISPs) in 2001.

Request # 1: This ISP request inquired about the availability of a Multi **PVC** product.

BellSouth responded that it is currently developing such a product and plans to offer pursuant **to** tariff in June **2002**.

Requests #2 -11: These ISP requests inquired about the availability of symmetric DSL (SDSL) services in BellSouth's DSL product suite.

BellSouth responded that it is currently developing **the** necessary operating **system** to support this **type** of service via the ITU standard G.SHDSL, with product availability scheduled for late **2002**.

Requests #12 - 21: These ISP requests inquired about **the** availability of Service Level Agreements (SLAs) for BellSouth's DSL products.

BellSouth is working with ISP's to more clearly define SLA's and what **our** customers want **out** of them.

Requests #22 - 26: These ISP requests asked for specific enhancements to BellSouth's existing BellSouth **ADSL** Service, End-User Aggregation **Tariff**. One request was for a conversion capability from ATM to BellSouth ADSL Service, End-User Aggregation (or vice versa).

Beginning in early **2002**, BellSouth permitted small numbers of conversions **and** is **tariffing** an option to support large numbers of conversions. The tariff is expected to **become effective in** May 2002.